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IMPORTANT FIRE INSURANCE CASE.

ADOLPHE LAZARE

VERSUS

THE ROYAL INSURANCE CO.

BEFORE

Mr. JUSTICE RICHARDS.

MAY, 1858.

TORONTO:

MACLEAR, THOMAS & CO., PRINTERS,

17 & 19 KING STREET EAST.

LAZARE V. THE ROYAL INSURANCE COMPANY.

SPECIAL JURY.

JAMES BEATY,
DALRYMPLE CRAWFORD,
HENRY DENNIS,
WILLIAM HARTMAN,
GEORGE IRWIN,
WILLIAM JAMES,

ARTHUR McMASTER,
WILLIAM A. ORR,
THOMAS SHARPE,
JOHN TILT,
JOSEPH WRIGHT,
THOMAS BRUNSKILL.

LAZARE V. THE PHOENIX INSURANCE COMPANY.

SPECIAL JURY.

THOMAS BRUNSKILL,
ANDREW CRAWFORD,
WILLIAM LINDSAY,
JAMES McMULLIN,
JAMES PRICE,
WILLIAM SELBY,

ALFRED STEVENS,
WILLIAM CREIGHTON,
WILLIAM LEE,
E. BRYSON,
JAMES TAYLOR.
JOHN STREET.

LAZARE V. THE ROYAL INSURANCE CO.

This was an action brought before a special jury by the plaintiff to recover the amount of his policy in defendant's Company, in which his stock was insured prior to a fire which occurred in the plaintiff's premises—a shop in the Rossin House—on 17th December, 1857, at half-past 6 P. M., which was immediately arrested, and no goods were supposed to be lost by fire. The Company resisted the claim, on the grounds that the conditions of the policy had not been complied with, and also that the plaintiff had practised fraud, and false declaring and affirming, and had by such practices forfeited all claim or benefit under the policy. The plaintiff was also insured in the Phoenix Company, who likewise resisted his claim on the same grounds.

Counsel for Plaintiff—H. ECCLES, Q. C. ; *Counsel for Defendant*—HON. J. H. CAMERON, Q. C., DR. CONNOR, Q. C., and THOMAS GALT, Esq.

His Lordship JUDGE RICHARDS presided.

MR. ECCLES, in opening the case, said : I may tell you, gentlemen of the jury, that the fates are rather against my client this morning—in one respect—that his counsel is hoarse ; but as I get into the case, I trust that hoarseness will wear off. I have a serious responsibility to-day—having solely to conduct a very important case, in which I am opposed by a row of very eminent counsel. I feel I shall have to exert myself in some measure—not to endeavor to make plain that which is already plain enough, the right of my client—but to guard against any extraneous matters being brought in here, in order that the case may assume a confusion. As it presents itself to my mind, the case is as clear as can be. The plaintiff in this action, Mr. Lazare, is a Frenchman by birth, and has but a very slight knowledge of the language, manners or customs of this country. He established a business in Toronto, much to the satisfaction of the public generally ; and he effected two policies of insurance on his stock, one of which forms the subject of the present action. The policy I now hold in my hand is one granted by the defendants in this suit—the Royal Insurance Company. On the 18th January, 1857, they insured £1,000 on his stock-in-trade, consisting of the fancy articles and dry goods contained in his store, Rossin House. There are certain conditions in this policy, as in all policies, the main object being to guard the companies against the imposition of fraud ; and these conditions are exceedingly stringent in their terms, holding the insured to forfeiture on the slightest omission of

the restrictions. No doubt, gentlemen of the jury, many of you have observed how strictly the Companies tie down the insured to obey the minutiae of their conditions before they receive the amount insured. Such a plan is of course necessary to protect the Companies, and no one can blame a company for attaching the most stringent conditions to their policies to guard against any fraud in the power of man to commit. Now, we say we have fulfilled all the conditions of our policy. The declaration of the plaintiff simply states that this policy had been made, and that a fire broke out in December last in the basement of the store in question, by which damage was sustained to the amount of £3,000, a fair portion of which this Company is liable to pay—that is, if we are in a position to recover at all. In answer to the plaintiff, the defendants give the Court and jury to understand they will raise a constitutional issue, which you are now sworn to try. What the defendant says in the first place is a mere matter of form. The making of the policy is denied. This is, however, merely to canse us to produce it, and we intend doing so. For all the purposes of the trial, we will therefore call the second position of the defendants first; and in that they say that the stock-in-trade, shop furniture and fixings mentioned in the declaration were not destroyed, damaged or lost, as therein mentioned. The object of that statement is, probably, to put us on trial of the exact amount of loss sustained. And while on this point I may say that it is almost a matter of impossibility in many instances, and a matter of great difficulty in all, for any party sustaining loss by fire to tell the Insurance Company exactly what he has lost. All the law requires a man to do is to show to the utmost of his power what he has lost, and the amount of his damage; and when he has done that, the jury are asked to satisfy themselves what the amount really is. So it will be with us to-day. We shall not offer evidence of every article Mr. Lazare lost; but we will bring parties here who will give you a correct idea of the worth of the goods and the loss which must have been sustained by fire. And so far as I have been able to form an opinion of the evidence, we will be able to make out a much better and stronger case than generally happens. It so happened that on the 31st August, Mr. Lazare commenced business and took stock, and we may be able to show what he had in hand that day. But even there we may find difficulties. Mr. Lazare did not find it necessary to employ numerous clerks about the establishment, the sole parties managing the business being Mr. Lazare, his wife, and two young ladies. He kept his own books, and therefore we have no book-keeper to produce. Such being the case, I ask is it not reasonable for the jury to be satisfied with the best evidence we can give them—the evidence of the books in Mr. Lazare's handwriting; the evidence of his two assistants, that day by day Mr. Lazare entered the sales in his own handwriting? It will be found that nearly all Mr. Lazare's entries are made in French, that being his native language. So we shall perhaps have to furnish you with

an interpreter. Mr. Lazare did not understand keeping books in English, and he consequently kept them in French and in the currency of France—a currency with which we have very little to do, in the Upper Province at all events. After the stock was taken on the 31st of August, Mr. Lazare received large consignments of goods from time to time. With a few exceptions of some small bales bought at Hamilton or Montreal, the main bulk of his stock was imported from Paris; for he almost exclusively dealt in French goods, and we can produce the original invoices of these goods from Paris. As to the mode in which these goods were taken into and arranged in the shop, we shall bring forward the two young lady attendants. They were the persons who called out the goods as they were taken from the pack, and saw their prices ticked on the margin of the invoices. And they will be able to tell you that all these goods were received by Mr. Lazare in his shop. From these circumstances we will be able to know the amount, or very nearly so, of Mr. Lazare's stock between the 31st of August, 1857, and the 7th of December, when the fire broke out. The next step to be taken in forming our estimates is to find out the sales during that period. That we shall show by the production of the day book, and by the evidence of the two young ladies, who will give general evidence as to everything sold. A cash business was principally done. The proceeds of these sales were handed over to Mr. Lazare, who made entries of them during the day and posted up at night. They will also be able to tell you that no goods went out except such as were so sold and entered, and none could go out without their knowledge. The next thing to learn is, what stock was there after the fire; and of that we have the most satisfactory and best evidence. Wherever a fire takes place, it is a well understood custom that before anything is touched or removed the Insurance Company and the sufferer by the fire appoint two persons to go and inspect all the remains of goods on the ruins of the house. As in this instance, they take possession of everything, and what there is capable of valuation they fix a value on. Whatever deficiency appears after deducting the remains of the goods from the balance of stock on hand, is thus found to be the amount missing, lost or damaged. All these steps have been taken by the Insurance Company. They appointed a valuator, who, in conjunction with one appointed by us, filled a book with a detailed statement of Mr. Lazare's stock, and put down, as nearly as they could, the present value of what remains. I am not aware that the Company attempted to impute any fraud to these parties, and we, on our part, are perfectly willing to be bound by their valuation, though they may have put down many things much lower than they ought to have done. This evidence will, I doubt not, prove satisfactory, and dispose of that issue. The second plea on which the Company rely is as follows: They have a special provision, to the effect that all persons insured by this Company who shall sustain loss or damage by fire, are immediately to give notice to the Company or its agent; and within

fourteen days after the fire they must give in as particular an account of their loss as the nature of the case will admit, and make proof of the same by their declaration or affirmation; and if there should appear to be fraud in such statement or declaration, then the assured shall forfeit all claim under the policy. The plaintiff complied with this law; but his statement and declaration were set aside. The defendants further told the plaintiff they would claim from him a statement of the quantity, quality, and prices of each article. Now it is for you to say is that a reasonable demand. We see that Mr. Lazare, within the specified 14 days, did deliver in as particular an account of his loss as the law requires, and confirmed it by declaration under oath. As to setting forth in detail the quantity, quality, and price of each article, we set forth that it is not a reasonable demand under the circumstances. The plaintiff further states that he offered the Insurance Company as practical a statement of his loss as he could give; that he offered to show the agent of the Company his stock-books and invoices, but the said agent refused to examine the same. For a fourth plea the defendants say that in the affidavit of the plaintiff there is false swearing, inasmuch as he swears that he lost £3,175 8s. 1d., while his actual loss was only £750. Now that is really the contest to-day. The Company charge Mr. Lazare with wilful and corrupt perjury, and they say the policy is void. Now I will only remark that it is to be hoped when the Insurance Company dare to charge a man of respectability and standing in society with the crime of perjury, that they had previously taken every step to ascertain that their accusation was founded in truth. If, on the contrary, the Company made that statement loosely, then they had taken a most unwarrantable step; and you, gentlemen of the jury, have now to determine that issue. You are trying Mr. Lazare for perjury, as if he were a criminal in the dock, and unless satisfied you can convict him on that charge, you cannot find that issue in favor of defendant this day. Now the very best business men are occasionally liable to mistakes; much more so when, in case of fire, he is tied down to 14 days to get his certificate from the magistrate, make his affidavit, and make out a statement of his losses. A foreigner, like Mr. Lazare, would, of course, be much more liable to fall into mistakes; but his committing an error does not make him guilty of perjury; and he is charged with wilful and corrupt perjury. We set them all at defiance. We challenge them to bring home to Mr. Lazare one atom of evidence touching the crime with which they have charged him. Another condition of the policy is, that before the assured is entitled to receive his money he must get a magistrate of the neighborhood to certify his belief that through misfortune, and without evil practice, the assured suffered loss to the amount stated. That we have got. This affidavit is from Mr. Alderman Brunel, who certifies that he knew Mr. Lazare, and was acquainted with his character and circumstances, and that he did on the 17th December suffer loss and damage by fire to his

stock. He states his belief that by misfortune, and not through any evil practices, Mr. Lazare sustained loss and damage to the amount of £3,000. Now that is admitted on the record; and I offer it to you as a strong circumstance in itself, that an Alderman of the city having taken the trouble to investigate the whole thing, fully subscribes to it and bears out our statement. They say we were bound to furnish them with proper proofs, and neglected to do so. Now I shall show you the steps we took in that respect. We served them with a notice on the 22nd February, stating that since the 11th January last we had been willing to show all books, papers and documents connected with the establishment, and that at any reasonable and fit place the same might be inspected. They were also furnished with a notice, setting forth that these books would lie at the law office of Messrs. Eccles, Carroll & Doyle, for one week, during which time they might be inspected. Now we thought that as fair an invitation as we could possibly give. The simple answer to this was, that they did not consider our affidavit and notice satisfactory, or a compliance with the terms of the policy. Now what sort of treatment is that from an Insurance Company? Mr. Lazare's affidavit was to the effect that on the 18th June, 1857, the Royal Insurance Company gave him a policy on his stock. On the 17th December a fire broke out, which fire was, to the best of his knowledge, occasioned by a flaw in the hot air furnace. The value of the stock-in-trade at this period was \$21,983.29. Of goods lost or damaged, the amount was \$12,703.61, or thereabouts. The shop fixings were damaged to the extent of about £137. This was as full a statement of the case as could well be given. Yet with these facts all before them, they tell us we have not complied with the terms of our policy. It is very probable that what the Company wanted was to get Mr. Lazare's books into their hands. It is fortunate the case came into my hands before they succeeded. I happen to have some little experience in Insurance Companies, and of this Phoenix Company in particular. Such was their conduct in a case in Montreal, that the learned judge pronounced them guilty of a fraud. They kept the books of an insured party, and yet insisted on his making up a statement of his accounts. I would advise a client to let an Insurance Company see his books, make extracts from them, but not to attempt to take them away. How should we have been able to make out a case without our books. If, then, those books were everything to Mr. Lazare, was he not perfectly justified in keeping them? The statement of the losses delivered to the Company were made out by Mr. Maulson. As to the charge of £3,000 damages preferred by the plaintiff, some people might be surprised at so large an amount being destroyed in so short a time. But to give you an idea of the value of Mr. Lazare's stock, I would ask you to fancy £7 10s. being charged for a lady's pocket handkerchief, and such handkerchiefs were there in dozens. The Insurance Company insured them.

at these prices. In order to convince you of the small compass these dear articles would fit into, I told Mr. Lazare to-day to pack me up a box with \$500 worth in it, and a very small box it would be. £5,000 worth of his goods might be carried away in an ordinary cart. You will thus see how Mr. Lazare's great loss in a small space of time is accounted for.

The learned counsel having concluded, the examination of witnesses commenced.

Mr. MAULSON, *examined by Mr. Eccles*.—I am a notary public. This statement was made out by me from the books, and statements given to me by Mr. Lazare. I made the statements in January. The Paris invoices are in French. They are taken in 50 per cent. in the French franc. I got the printed forms from the Royal Insurance Office. Delivered them to the Company the day after they were sworn. They were sworn on the 2nd January. The duplicates are marked I think, on day of delivery. There were no objections made at that time. The Royal, so far as I remember made no objection. Can identify the books and papers I think, from which I made the estimate. (Witness identified day book, old stock book of 31st August, invoices, and appraiser's book.)

To Mr. Galt.—Have no personal knowledge of Lazare's affairs made up in statements from the books he showed me.

To Mr. Eccles.—They said they wished to have the books and vouchers, Lazare and I took them down to Murray's, and he said they wished possession of them. They refused to look at them, or have anything to say to them unless I left them.

Miss BAKER *sworn*.—I was employed by Mr. Lazare last winter, fall and summer. First went to him since he opened in the Rossin House. Remembers taking stock in August. Remembers the stock book (shown her). Mr. Lazare, Miss Pitt and I took stock. Mr. Lazare would call out the article, we would count it, and he would enter it in the book. The shop was stocked middling. The invoices shown me were served by me, and I remember them coming to the shop. Goods came to answer the invoices. When they arrived, they were taken into the shop and unpacked by Mr. Lazare, Miss Pitt and I. He called out the articles, with the invoices before him on the counter, we counted the articles, told him what it contained and he marked them. Mr. Lazare and sometimes we, marked the selling price, at the same time. The goods of the invoice dated 13th July, Paris, were in the shop when we took stock in August, and were included in the stock book. They were taken into the stock. The invoice dated July 24, I don't know whether it was taken into the stock or not. I know some goods were got from Ross Mitchell before the fire. I remember things coming from Henderson & Co., and Moffatt, Murray & Co. When the fire occurred, I think about half-past six, I was at home. Went to the fire. At the time of the fire, the store was largely stocked. From the time we

took stock in August, and the date of the invoices, no goods left the shop except what was sold. I would know had any such left. Gave much credit,—in which case the entries in the day book were made by Lazare. When I sold on credit I told him—saw him enter it often, and saw the entry to be correct. When I sold for cash, left the money in the desk—he would enter it as so much sold for cash. Was there after the fire, after the goods were taken out that night, except a few things. Saw much damage was done before the agents removed the stock, the stock looked very poor. Saw the remains of goods then about the floor and in the place. The shop floor was burnt through. There seemed to be a great quantity of burnt things in the cellar, which must have fallen through the burnt opening. The goods of Mr. Lazare were very expensive. French laces were £3 a yard. Lady's handkerchiefs were from £4 to £5 each. Had a great many, and laces. Lace collars were from £5 upwards. Gloves, French kid, were \$9 a dozen. Dresses were from £7 to £15, and no higher. French shawls were £16 or £17. Fancy goods, such as gold bracelets, we had many of. Some shawls went at £26. We had a large stock of such things, I was in the habit of selling daily.

To Mr. Cameron.—I went to Mr. Lazare when he first opened in the Rossin House—think it was in the autumn of 1856. (Witness shown day book.) That is the only day book I ever saw in the establishment. We had a ledger. The entries in the day book were all made by Lazare. Saw all the goods in the invoices. In August 1857, a large portion of the goods in the invoices was in the store. One dated 10th February, 1857, amounting to 3439 francs were there. The goods for the invoice of 13th July were then there, too. The goods were all landed at the store. They have been, I know, in the Custom House. Do not know how the Custom House mark is not on them. I saw Mr. Lazare enter the goods as I called them out, but did not see the entries he made. Do not remember why we took stock in August. I do not know from what book the gross sum of debts was taken. I saw the remnants of things lying about the shop, spoiled with water after the fire. I saw things there also partly burned. But saw no burned things elsewhere. Saw things damaged with water lying in the street. Cannot tell of what they consisted. Made no examination of the stock afterwards. Business was dull about that time and for some time before it. Made a large addition to stock during autumn. Did not live in the store. Left in the evening and came back in the morning.

To a Jurymen.—Mr. Lazare had the original invoices to show him the prices, and I called out the quantities when we were taking stock in August.

Miss M. Pratt, sworn.—Went to Mr. Lazare's five months after Miss Baker. Went in March, 1857. He was doing business in the Rossin House. We three took the stock. I recognise this book as the book in which the stock was taken. I remember these invoices coming in; and also the goods cor-

responding with them. Three of us opened the boxes. Mr. Lazare had the invoices, and we saw that the goods corresponded. I remember the large invoice for 11,000*f* coming. If any goods had gone from the shop I would have known it. I looked at the entries in the day book, which was kept on the desk. The entries were always correct as far as I saw. Mr. Lazare entered these things in the book. (A box was here put in containing a quantity of handkerchiefs, fans, trinkets, and other things.) The value of those things is \$300 or \$400. Here is a piece of French lace worth £3 a-yard, also fans worth \$30 a-piece, other pieces of lace worth \$6 a yard, bracelets worth £3 10s. and £4 a-piece. We had a large stock of these things on hand at the time of the fire. I did not go down at the time of the fire; but went down the day after, when I saw a great deal of ashes in the basement; but I did not notice what they were from.

To Mr. Galt.—Those things came into the store in August, 1857. I do not remember whether they were in the shop at the time the stock was taken. I do not remember when this piece of lace came into the shop. The prices I mentioned are the selling prices. I do not know the difference between the cost and selling price. Those are the selling prices in the stock book. I do not know what profit Mr. Lazare had on those goods.

To Mr. Eccles.—I think that that is the selling price that Mr. Lazare put down in the selling book. On looking again I do not think that those prices are the selling prices.

To Mr. Cameron.—The reason I have for saying so is, that the cloak is not marked at the selling price. There is also a silk purse mentioned at ten shillings, and we have nothing of the kind sold in the shop so low as ten shillings.

To His Lordship.—A lace dress at £14 is at the cost price. Also gentlemen's dress shirts at \$5 I think are at the cost price. I cannot tell generally whether the prices mentioned in the book are the selling or cost prices.

MISS BAKER, recalled.—The entire stock in the stock book are at the cost price.

To a Juror.—The item of £50 for perfumery is the cost price.

To Mr. Cameron.—Mr. Lazare took the invoices from the stock that came with the goods. On the 30th August he had all the preceding invoices for last September by him. Mr. Lazare put those prices on the stock, and carried it out turning the francs into pounds. It did not take him a very long time to do this, but I could not say how long. I know that those are the cost prices because I did not sell the goods at those prices. I could not say what the articles were sold at. The articles are ticketed in pounds in the shop. I do not know what this £680 4s. 11d. means.

MR. JAMES HOUGHLAHAN, sworn.—I was the porter at the Rossin House last winter. The fire broke out at half-past six in the evening. I was in the Hall. Mr. Joslin called me out. I saw the smoke coming out and

went up to Mr. Lazare, and he came down and we went into the place. I was there first, and sent for an axe to break in the door. I broke half of the door in. There were a good many people there, but we were the first who got there. It was a nice night, not being dark I saw many people get into the house trying to see where the fire was. A great deal of goods were carried out of the shop, by many people to Rae's saloon. I took some there myself, but do not know where the rest were. There was a good deal of confusion there. The cases containing the jewellery I could not speak of. I do not know what was done inside. I saw people carrying off goods to Rae's saloon. I saw goods destroyed. They were picked up and carried to Rae's. The goods were destroyed by water from the engine. I do not think there were any carried out behind the store.

To a Juror.—There were some goods scorched that I saw. After a hole was broken in the floor the flames came up. No fire from the basement came into the shop.

To His Lordship.—I believe the floor was nearly burnt through. I saw no fire in the shop.

MR. RICHARD TINNING.—I was at the fire from the commencement. I saw nothing but darkness when I went into the store. I saw goods taken out of the store and put on the sidewalk east of Rae's. The goods were in large packages. The most bulky things were piled there. I saw small things taken out of Rae's saloon that had been carried there. I saw them taken out of the shop, but did not know where they went to. A good deal of perfumery was taken away. I saw one case broken myself. After the firemen came I went out of the shop. I saw the police afterwards guarding the things on the sidewalk.

To Mr. Cameron.—I was in the shop at different times. The first time I went the smoke was so great that I could not stop there. I cannot say whether any of the things brought out of the shop were stolen or not.

MR. SPOONER.—I live in the Fossin House, and was there at the time of the fire. I went there after the confusion was over. I saw several articles taken up west—some three or four apparent lots, perhaps more, west of the Rossin House. I do not know where they went to. I ordered one man to stop because it was my impression that they were taking them off. I noticed especially one gentleman's dressing case which I had to take by force from a fellow.

To His Lordship.—I thought he was going to steal those articles.

To Mr. Eccles.—The man with the dressing case was trying to get away. There were many things destroyed. I saw the remains of many things destroyed, such as the remnants of bottles of perfumery, which I saw outside the Rossin House.

To Mr. Cameron.—I had but little opportunity of seeing what was going on as I was endeavouring to mind my shop. Of course I could not be positive that the men carrying away goods were going to steal them.

MAJOR JOSEPH GEE.—I was at the fire from the commencement. I saw goods carried away west and east, and some lying on the sidewalk. There was much confusion then. I have been in the habit of going into Mr. Lazare's shop, and can say that there was a very good stock of valuable goods and costly goods there.

To Mr. Galt.—I was in the shop after the fire. There is an entrance to the Rossin House west. I saw police there.

To Mr. Eccles.—The police came after the goods had been carried away.

MR. DOYLE.—I was at the fire shortly after it broke out. The police arrived after I arrived there. I saw the goods carried to Rae's and Smith's saloons, and also to a place on the other side of the house. I did not know where all the goods went to. I think there were many things carried away that were not carried back again. The day before the shop was well filled with goods; and I saw after the fire many things brought into the shop that had been broken, such as broken bottles of perfumery. I heard one man in the crowd say that he had had enough of perfumery to last him for a year to come.

To Mr. Cameron.—I asked Mr. Lazare, whose business we transact, where his goods were, and he could not tell me. He was half frantic. Some of the goods taken away were brought back. I saw them carry things to Smith's saloon and found out where they carried other goods to afterwards.

MISS SOPHIA BAKER.—I live on Adelaide street. I heard the alarm of fire on the occasion in question. I went to the corner of the Rossin House, went back for my sister and returned again. I saw policemen there. I saw a man pass the Theatre with an armful of boxes from Mr. Lazare's store. The boxes were larger than the one in Court. I did not see any other goods.

To Mr. Cameron.—He had from four to five boxes larger than this one. He came from towards the shop door. I was standing at the entrance to the Hotel near Rae's saloon. I saw policemen there.

JOHN BUCKLEY.—I was a cabman at the time of the fire. My stables are opposite to Lazare's. I ran down when I heard of the fire and saw smoke; on going in I had to run out again so great was the smoke. I saw the goods taken in all directions by a large crowd were present. I picked up one of those machines that goes on the ladies heads at the balls and gave it to Jimmy—he with the black whiskers. Near my stables next day, I saw beautiful things (bracelets) into which I could not stuff my hands. They were buried under the dung, and I left them there for a few days, when I went back to look at them.

Mr. Eccles.—To see if they would grow, I suppose.

Witness continued.—Fortunately some time afterwards I thought of the fire at Lazare's, and about four or five days from the time of the fire, I told

him of the things I had found, and gave them up. The reason I did not take them away at first was that I was afraid that if I took them somebody would give me a knock on the head.

To Mr. Cameron.—I recollected seeing such things in Mr. Lazare's shop, for I used to look in to see the girls in the window, you know. When I told Mr. Lazare of this, he said that he had lost such things, and he told me to bring them over, but I did not do so for four or five days—as I was afraid that I would get a knock if I took them. Mr. Lazare did not come over when I first told him about them. He came over at last with three or four men, and just took them away without turning up more of the dung, to see if there were any more buried there. Mr. Lazare left the bracelets there for four or five days without insisting on getting them.

To Mr. Eccles.—I saw white slippers falling about in the wet, at the time of the fire.

LAWRENCE LEVY.—I am engaged in the same line of business as Mr. Lazare. I live in 84 King Street East. I was usually in his shop three or four times a week before the fire, and usually looked at the stock. I formed an opinion then that the stock was worth £5000. I am familiar with those things—such as pefumery, bracelets, &c. I assisted in removing goods at the time of the fire. I did not see goods carried away. I picked up a piece of very valuable lace under Rae's saloon. I picked up a great deal of lace dresses, silks, perfumery, &c., out of the street and carried them up stairs. The police were there doing nothing however. It was a wet night, raining.

JOHN RANKIN.—I lived in the Rossin House at the time of the fire. I saw no policemen there. I was at the back of the house and saw no goods carried out there. I went up stairs and received the goods that the men brought up. I considered that all the made up goods were destroyed, such as opera cloaks, &c. I did not see any goods in the street.

ALEXANDER NOTMAN.—I knew the plaintiff's shop in November, and examined all the stock minutely. I thought that it was worth between £5000 and £6000. The general description of the stock was of a costly character. I was purchasing goods from Mr. Lazare.

To Mr. Cameron.—I bought a pair of boots, a tie and shirt, and Mr. Lazare showed me the whole stock.

To Mr. Eccles.—He shewed me the stock because I am in the business myself, and also my wife is French and understands the things.

HON. MR. CAUCHON.—I have a considerable knowledge of French articles, having been in Paris, and going through the shops there. I have often bought articles in Mr. Lazare's shop. I was in his shop on the last days of the last session.

To Mr. Cameron.—I bought a twenty dollar handkerchief on that occasion.

SIMON SICOTTE.—I belong to Rossin Brothers' firm. They deal in bracelets, &c. I was at Mr. Lazare's when they were taking stock in August.

and looked over the things with Mr. Lazare. I thought the stock was worth £2,500. Afterwards I saw goods arrive from France. I was there but once when Mr. Lyons checked off his goods, and that was after August. This was two months before the fire. The shop was well filled. There were £5000 or more worth of stock in the shop the week before the fire. The appraisers did their work when I was present. They marked down the goods in the first column at the cost price in francs. The first column professed to show the value at invoice prices. There were some goods put down in the appraisers valuation book by guess, and some at the damaged value. There are some little articles put down as I mention. A lot of jewellery at 150 francs was taken in a lump at the damaged value. The real value was three times as much.

To a Juror.—I know the value of the goods.

To Mr. Eccles.—Those who put it down knew what they were doing. A lot of buttons at 40 francs were also lumped, and were worth three times as much.

To Mr. Cameron.—Mr Lazare was present at the valuation telling the appraisers the value of the articles. The buttons and jewellery were put down when he was out. The first column in the appraisers' book was the cost price, and there was another column for the per centage or damage. The buttons were not damaged and nothing was underrated from their value.

To Mr. Eccles.—I saw the stock book in Mr. Lazare's hand. I saw some of the invoices.

MR. LYONS, *Fancy Dry Goodsman of 82 King Street West.*—I only know the stock by seeing the stock through the window. But I think that his stock was more valuable than mine, but not in the whole.

SAMUEL ROSSIN.—I was in Mr. L.'s shop often before the fire. I was there when they took stock in August. I saw the stock book then, and think that the entries alluded to were the stock price, because I wanted a shawl for £10, but Mr. Lazare showed me the invoice which was marked £12. At that time Mr. Lazare mentioned what his stock was worth, but I forget what it was. It was, however, thousands of pounds. I ascertained the amount of the stock from the stock book after the fire. I was often in the store to see the new French goods. I have been in the jewellery and perfumery business myself. And I think that Mr. Lazare's stock was very valuable; worth from £5000 to £6000 before the fire. I was not at the fire. When I arrived from Hamilton the fire was over. I did not see any goods carried away. I was appointed appraiser by Mr. Lazare, and Mr. Callaway by the Company; I said that generally I could tell the value of the goods. This is my valuation book, which I signed every evening when stock was taken. Mr. Davidson was there on behalf of the Royal, and he signed it also. The first column, I think at first, I did not understand,

whether we were to put the goods down at the damaged state or at their cost price, but afterwards I put down what the goods cost, and Mr. Lazare helped us. But before we understood this we put down the goods in the damaged state in the first three pages of the book. The gross value of goods in their damaged state amounted to £2274 8s. 5d. The goods were not in good order, and I put them down at the damaged rate.

To His Worship.—The invoice prices of the first page would have amounted to more than the value set down.

To Mr. Eccles.—The goods that were saved were placed in a private dining-room of which Mr. Joslin had the key. There are duplicate keys to the room, of which the chamber-maid has one. No one else had entrance to the room, that I had knowledge of. I was in Mr. Lazare's shop after the goods were put back, and it looked a great deal more empty than before the fire.

To Mr. Galt.—The franc was taken at 15d., or our quarter dollar. When I went into shop the goods were not all in the same places as before. The jewellery alluded to in the valuation book was damaged. It was not all gold—but some of it was.

MR. FRANCIS CALLAWAY.—I was appointed by the Companies to value the stock after the fire. This is my book. I heard what Mr. Rossin said. I suggested that we should have some definite value for the French franc, and so we made the value of it 1s. 3d. There were some goods so damaged that we did not put them down at all:—of this description, I can particularize two fans, a head-dress, port-monnaies, &c., which did not amount to much value. I observed the quality of Mr. Lazare's stock before the fire. I observed a difference in the quality of the goods after the fire, all his goods were of a costly nature.

To Mr. Galt.—The articles we did not value could not cost more than \$50. It was some time after the fire that I was in Mr. Lazare's store. I do not think his stock was reduced a half. Mr. Lazare remarked that there were a number of trinkets and a few silk dresses gone, which dresses all turned up before the valuation was complete. But he did not say there were \$10,000 worth of goods lost. The prices put down in the first column alluded to, were in the cost price,—with the exception of a few goods which Mr. Rossin told us the value of. I appraised all the goods, jewellery, and all, at the cost price.

To a Juror.—The invoices of the jewellery were not forthcoming, and under these circumstances we had to consult with Lazare, and put down the value.

To Mr. Galt.—Mr. Lazare did not give me at any time to understand that there were \$10,000 or \$12,000 worth of goods lost. No information was given by Mr. Lazare as to when the goods were brought into the store. I heard when the stock book was first produced, Mr. Rossin say that it was correct, and that he (Rossin) would swear to it.

To His Lordship.—The goods that were badly damaged were laid aside, and valued afterwards.

To His Lordship.—We were only called upon to value the goods that were there. No invoices were produced for us to conclude by that more goods were lost. The valuation commenced on the 18th of December, and was completed on the 24th, and during this time Mr. Lazare was present. I did not hear from him anything to the effect that he lost more goods. If I had all my books and invoices, I could tell after a fire what goods were missing.

To His Lordship.—I could tell the number of caps and handkerchiefs only by their value,

To Mr. Galt.—If such a misfortune befel me as befel Mr. Lazare, I could have no difficulty in making a description of the amount—but not of the articles—if the goods were sold in small quantities for cash. I think it would be impossible in a retail business to give a detailed description of the loss as to quantity, quality, &c. But I think that the statement in question might be more full.

Mr. Cameron.—If you had bought thirty shawls, and had sold ten of them you could tell by what remained after the fire the exact number you had lost, and the same with regard to the dresses and other things.

To Mr. Galt.—If Mr. Lazare sold £600 in the best four months of the year, he would be doing a bad business, with a stock of £6000. The time of the year when the fire occurred was the best time in the year for selling goods; but the seasons are apt to change.

To Mr. Eccles.—I did not put the value of \$150 on this particular lot of jewellery. Mr. Rossin and I were together, and I understood him to say that \$150 was the value of that jewellery.

To His Lordship.—I only have an understanding on the matter.

To Mr. Eccles.—I believe that Mr. Rossin did tell me that that was the value; but I would not swear it. I import French boots and shoes, and also jewellery.

To a Juror.—I do not think there were £100 worth of goods taken in the first column at which the damaged prices were put down.

To Mr. Eccles.—There were some articles which were not put down. There was some chocolate in boxes, and fancy goods not put down. There were some goods so badly damaged that they were not put down. There were 80 head dresses put down which might cost from 5 to 30 francs, which were all put down at 7 francs. I swear that that is the price that Mr. Lazare told me they were worth.

CHARLES WEBSTER, Clerk of Rossin House, *sworn*.—The goods were put in the dining room on the night of the fire and remained there six days perhaps. I do not know who had charge of them. One servant has a skeleton key. I do not know whether the door was locked or not.

THOMAS JOST, *sworn*.—I went to repair the premises next day, and found some stuff which looked like the remains of silk and cotton partly burnt. I saw three pieces there like silk, which I threw out. I did not find out any other goods.

To Mr. Galt.—The pieces were one of them twenty-four yards long. But I could not say whether it was silk or cotton.

To a Juror.—I did not measure it, but we said it was that length. It was spoiled and we threw it out. It was black.

To His Lordship.—I do not know how broad the piece was, which we threw out.

MARCUS ROSSIN, *sworn*.—I was not at the fire. I was often in Mr. Lazare's shop before the fire. I am a judge of jewellery and perfumery. I think Mr. Lazare had between £5000 and £6000 in his shop at the time of the fire. I saw the stock put back after the valuation, and saw a great difference. It was diminished one-half at least. One-half of the store was empty—that is the general stock. The glass cases were not so much thinned. I saw them several times during the valuation. I do not think that Mr. Lazare ever made any remark as to the loss he had sustained. I think the goods were all undervalued; and the deficiency I think is more owing to that than to the fact that the goods were stolen.

To His Lordship.—Some goods were put down from the invoices, and some from what they were worth. And the value of some Mr. Rossin was asked about.

To Mr. Eccles.—I thought that some of the goods were put down at what they were worth.

To Mr. Cameron.—Those articles put down at their invoice value I could not tell whether they were damaged or not. They were all mixed up together. Some were damaged and some were not. I think that some of the goods were partly damaged. My impression is that the diminution in the stock arose from the undervaluation. The goods returned to the store I could not say how much were damaged. There is no doubt that the valuation was in Mr. Lazare's favor.

SAMUEL ROSSIN, *recalled*.—On the morning after the fire, Mr. Lazare called on me, to make up the valuation and he gave me the stock book and the invoices, and the amount of sales he had made, and from all these I arrived at the amount he ought to have received is £6000.

To Mr. Cameron.—I did not know that Mr. Lazare was getting goods from Franco. All his transactions were entered in his ledger.

To a Juror.—I do not know where the invoices were during the fire.

Mr. Galt.—They were in the desk—nothing was burnt.

WILLIAM GLEN, *sworn*.—I was at the fire and saw a great quantity of goods carried out and taken everywhere. There was no order, and the goods were taken anywhere. The place was quite dark, and a promiscuous crowd

helped themselves. I assisted to get a light into the store, and those who were active before became suddenly inactive—because, I suppose, they loved darkness rather than light.

To Mr. Galt.—I did not see the Chief of Police there. I swear I saw a promiscuous crowd there taking away goods. The crowd forced open a glass door. I saw no police then ; but I saw the Chief at the end of the affair.

This was the last witness examined for the Plaintiff.

Mr. Galt then arose to address the jury for the defence. He said that in first place he would call the attention of the jury to the fact that *Mr. Eccles*, in his address to the jury, had read to them a certificate from *Mr. Brunel*, and had said that that was the only certificate taken in the matter. Now when his learned friend said so, of course he was under the impression that no other certificate was in existence, but at the same time, he was sorry that his (*Mr. E's*) clients could have recourse to so mean a practice as to conceal from the learned counsel the existence of another certificate ; and indeed he pitied a case that had need of such recourse. For he could assure the jury that there were two certificates taken, and the other one was by *Mr. Beverley Robinson*, Alderman. (The learned counsel here read the certificate.) But after all he did not attach much, if any, importance to these certificates, for they did no more than merely state that *Mr. Lazare* said that he had sustained such and such a loss, and in fact it was not worth the paper on which it was written, because those gentlemen who made the certificate knew nothing of the loss which *Mr. Lazare* had sustained by actual inspection, but merely from having the amount from *Mr. Lazare's* lips. However, he would not argue this point any farther, but pass on to some of the assertions made by *Mr. Eccles* in the course of the case—such for instance, as that about the Insurance Companies, compelling the plaintiff to give in a notice of his loss fourteen days after the fire had occurred. Now this was not the case. The company did not hold *Mr. Lazare* to the time mentioned in the policy. All the company required of *Mr. Lazare* was to give a full and true statement of the loss he had sustained before the action was brought into court. And here he would remind the jury that if they found the first issue for the defendant, the plaintiff would not thereby loose his claim, or the suit would not be settled, because there was no condition which said that the policy should become void if the notice was not given—but simply that the conditions agreed upon in the policy could not be finally settled until such notice was given. Passing again from this subject he would ask, were the conditions of the policy fulfilled by *Mr. Lazare* ? Assuredly they were not, as he could show by letters, which were sent by the Insurance Company to the plaintiff, requesting him to furnish them with an account of the goods which he bought and sold from the taking of stock to the time of the fire, and all the books and

invoices connected with the matter; and up to the present hour the invoices, bearing the Custom House stamp, had not been sent in as requested. And further, the papers relating to the matter, received by the Phoenix Company, were inaccurate and incomplete inasmuch as the statement of loss had been sworn to by Mr. Lazare in two different amounts. But they had no desire to take any advantage of these things, and did not do so; and it was for the jury to say, whether Mr. Lazare had given that information which the Insurance Company had a right to ask for—for if he had not given such information he would have to give it before he could recover anything against the Insurance Company. The learned counsel then went into detail to show that the papers furnished by the plaintiff were not satisfactory, alluding to the letter of the 11th January, from the company, stating that the condition of the policy had not been complied with, and the answer in the 15th of the same month setting forth some invoices which could not be admitted; also the letter of the 3rd February, in which the company again state that the required information had not yet been given, and that until it was given the claim could not be paid, to which letter the answer was, that the company might come and make lists of such papers, books and documents as they wanted. This, continued the learned counsel, was tantamount to saying that all the mistakes which were in Mr. Lazare's books and papers, the company should innocently suffer for. Then as to the business which Mr. Lazare was doing at the time of the fire, it must have been very small indeed, as the jury who were all business men, would see by reflecting that only £620, out of a stock worth £6000, were sold during the best three months in the year. Why at such a rate he would be in the bankrupt court in four years. And it would be for the jury, who well understood these things, to take into consideration the claim made by the plaintiff, together with the real facts of his circumstances. The learned counsel then went on to animadvert upon particular portions of the case, but was interrupted by Mr. Eccles, who raised an objection.

His Lordship said that if the learned counsel went on he would have to sum up the whole case.

Mr. Galt did not intend to do so, but since an objection had been raised to what he was going to say, he would conclude by reminding the jury that it was for them to say whether the plaintiffs had given the notice and information that had been required of them, and that if they had not given it, he could not recover in the present case, and also, were the goods in the shop at the time of the fire that were said to be there? The other branches of the defendant's case would be dealt with by Mr. Cameron, when the witnesses had been examined.

The first witness called for the defence was SAMUEL SHERWOOD, *Chief of Police*.—I recollect the fire in question. I was opposite the theatre at the

time, and drove up in my buggy. The door of the shop was not opened. There was no crowd about the door. The smoke was slightly coming out. I knocked at the door, and a tall person with moustachios let me in. I do not remember seeing Mr. Lazare. The smoke increased, I went to the back door, and saw it fastened. I placed a constable at the front door with orders to allow no man to enter it. On searching, I saw where the fire came from a stove. The firemen then came up and I told them where the fire was. I took charge of the place, and let no man except a few gentlemen in who removed the goods. The police came up shortly after me, and formed a line from Rae's hotel to the hotel, by which the goods were taken away.

To Mr. Eccles.—There might have been a light in the shop at the time I came up. There was a light in the shop when the majority of the police came, it was only a couple of minutes behind. I went to the rear when the firemen came. When the back door was opened I took things out and made myself generally useful.

To Mr. Galt.—I saw Mr. Glen there; and was going to turn him out until he told me he was a friend of Mr. Lazare's. I distinctly say that a promiscuous crowd did not come there and take the things away.

To Mr. Eccles.—I distinctly say that before I came to the place a crowd did not get into the store; and I swear that there might only be one or two gentlemen there when I came there. Many things could have taken place before I arrived that I knew nothing of. The fire might have been burning for some time before I came up, as I only judged by the smoke.

MR. SAUNDERS.—I recollect the fire, at which I was present. I saw the crowd running down calling fire, and I went to the Rossin House, when I saw the smoke coming up under the shop. My impression is that the door was not open at the time, the door was broken open afterwards, and three or four of us went in. The firemen arrived first. No goods were taken out before I arrived. A promiscuous crowd were not allowed to rush in—none except a few were allowed to come in by me and Mr. McDonald. The goods were removed with the usual care manifested at fires. The goods were taken to Rae's saloon.

To Mr. Eccles.—I do not know where the goods were taken that I did not see. If I did see a man carry away \$400 worth of stuffs I could not tell what he did with it.

MR. CASTELL.—I remember the fire. I forget whether the door was broken open or not, when I arrived; but as soon as the door was opened I saw a bundle of silver mounted walking sticks knocked about, and I took them into the cigar shop. When I went back, I heard people saying where is Mr. Lazare, where is he. I helped to remove goods. There were no police there. The people carried the goods into Mr. Rae's house from the counter. The counter was taken out of the store and placed on the

sidewalk. Ten minutes after the police came up. I watched the goods on the counters. There was no opportunity given to steal the goods. I am positive that no great quantity of goods could have been stolen from the counters and Rae's hotel.

To Mr. Eccles.—I cannot account for goods being taken to Smith's saloon.

MR. HUTSON, *Deputy Chief of Police.*—I recollect the fire. I arrived there when they were bringing out the counters, with two or three policemen, whom I formed into a line to carry the goods to Rae's saloon. I did not see any goods taken west. There was pretty good order kept. I stood at the door myself. I was engaged in keeping goods from being taken west. Two hours elapsed before the place was closed up. Two policemen were left there all night, at the request of Mr. Lazare

To a Juror.—Mr. Sherwood was there before me.

To Mr. Eccles.—I did not see any goods taken down that did not go to Rae's. I cannot tell how the goods got into Smith's saloon. I did not see goods go beyond the theatre. I did not see goods go up west, although a person says that they did.

MR. SERGEANT CUMMINGS.—I recollect the fire. The engines were playing on it when I arrived. I had three men and a special with me. I saw Mr. Hutson and the Chief there. There were three constable there when I arrived. I saw them take goods to Rae's. The people carried goods on the sidewalk. A policeman was placed on the east of Rae's. I guarded the inside of the house. I did not see a promiscuous crowd carrying goods. I saw the goods carried up stairs.

To Mr. Eccles.—I saw all the goods that were outside go up stairs. I did not see the bracelets that were afterwards found in the dung-hill go up stairs. I saw many rolls of cloak lace go up stairs. I did not see the roll of black lace that was picked up half an hour afterwards at Rae's saloon go up stairs. I do not believe that any things were stolen, for if I saw anybody attempt to steal them I would arrest him. I did not see the bundle of walking sticks go up stairs. What I swear is the truth.

CONSTABLE MILLIGAN.—I recollect the fire. I went and gave the first alarm. I told the Chief and returned to the fire. The door was not opened, and I assisted to keep the people back until the firemen broke the door open. I saw the goods taken to Rae's saloon. The goods were left on the sidewalk. I did not see any in the middle of the street. No goods were allowed to go west or east of Mr. Rae's saloon.

To Mr. Eccles.—To the utmost of my power I prevented goods being taken east or west of Rae's. I did not know goods got to Smith's saloon. A man might have carried away this box of lace under his coat, but it looks a trifling thing. I do not know how the bracelets got under the dung.

MR. SMITH.—I keep a saloon. On the night of the fire, I went up and

entered the premises with Mr. Lazare. He handed to me four boxes of dresses which I carried down and gave to my wife, and went back. I took away some opera hoods and four boxes more, and some scents. When I returned Mr. Sherwood was there, and I did not go in again. After the fire I went to Mr. Lazare and told him of the things I had taken and he thanked me. Mr. Lazare afterwards sent for the boxes.

To Mr. Eccles.—Mr. Sherwood was not there until I took away two loads of boxes full of stuffs. The boxes were larger than the one in Court. The boxes were open, and were filled with ladies silk dresses.

To a Juror.—There was not a great crowd there.

Mr. JOHN E. WILSON.—I was at Mr. Lazare's ten minutes after I heard the alarm. I am in the office of Moffat, Murray & Co., but have no connection with their Insurance business. I have looked carefully through the valuation list. It is a certified copy of plaintiff's stock book. I am acquainted with the dry goods business. Three fourths of the goods were saved from fire according to the valuation books. A good deal of the goods with the stock were old goods.

To Mr. Eccles.—I know the goods were old by their general appearance. I was often within Mr. Lazare's shop. I was not in his store in August nor since May. I saw goods in May and I saw them again at the valuation, therefore I know his stock was partly old. There was a piece of black silk for instance that came from our shop that I recognized in his. There was another piece with our mark on it. The goods which I sold to Mr. Lazare, and which I afterwards recognized in his store amounted to more than £5. There were also some silk dresses which I recognized, and which amounted to perhaps £10. I fancy that £50 worth of goods came out of our shop. The remainder I recognise as old goods by no private marks but by general appearance. I am a clerk in Moffat, Murray & Co., who are agents for the Phoenix. I did not see all the stock. I do not know how much it was insured for.

The Court then adjourned at six o'clock until half-past nine the following morning.—His Lordship first giving the jury the customary caution in regard to their conduct in such cases.

The Court met at half-past nine o'clock. His Lordship on the bench.

Mr. MURRAY was the first witness examined. He said: I am the sub-agent of the Phoenix. These are copies of invoices, stock-book, and appraiser's valuation. I received those papers from Mr. Maulson.

JOHN LEARY.—I recollect the fire, at which I arrived after it was over. The Chief of Police called me and asked me to remain and see that nothing would happen. I remained there two days. Another constable named Hogg was working with me. The goods were in the shop. No goods were removed out of the shop, that I saw; but I saw some goods on the sidewalk which I cannot account for. No goods were taken away while I was there.

Mr. DAVIDSON.—I am Inspector for the Royal Insurance Company. I recollect the fire, which I was not present at until the next morning, when I met Mr. Lazare. I first inquired the cause of the fire, and he showed me the hole in the floor, and told me that the fire originated in the hot-air stove. I asked Mr. Lazare if there was anything burnt, and he said "no," distinctly. I also saw myself that nothing was burned. I went into the cellar with Mr. Lazare; that is where the stove was. No goods were there, and Mr. Lazare said no goods were kept there to my inquiry. I saw no remains of burnt silk or cotton, and Mr. Lazare said that he did not think that anything had been burnt. The cellar appeared to be altogether empty, for even the remnants of goods were not to be seen. The upper shop appeared to be nearly empty; nearly all the goods had been taken away. In the shop up stairs I saw two shirt collars, and some portmonnaies and pictures, which appeared to be trampled on the wet floor and partially burnt, being a little singed. I examined these articles. I asked where the rest of the goods were, and went with Mr. Lazare up stairs to where they were kept, and Mr. Joslin opened the door for us. On going in I saw the goods lying about, but I did not see anything burnt or injured by fire. I was ten minutes there. Mr. Lazare asked how he had better proceed. Mr. Murray told him the usual course to follow, and Mr. Heward told him the same thing. Mr. Lazare asked what way was that, as he was anxious that he should get the goods ready for the Christmas market. The course was to appoint two appraisers to value the goods—one to be appointed by the Company, and the other by Mr. Lazare. Mr. Lazare assented, and the two gentlemen were appointed as already mentioned. This is the valuation book. I was present all the time. Mr. Lazare said on the second day that he was afraid some things were stolen; he did not say anything the first day. The shop was taken first, at the request of Mr. Rossin. Mr. Lazare did not make any observation when the valuation was completed.

To Mr. Eccles.—The cellar was lit partly by the hole in the floor. The burnt boards had been removed from the place they had been in. I saw burnt boards in the cellar. I did not remove them. There were some pieces of charred wood in the cellar. I did not remove anything. I did not see what was under any of those things.

To a Juror.—I was merely there to look on. Mr. Lazare valued some of the things for us when we could not value them otherwise.

JAMES WOODHOUSE.—I am in the Customs department. I attend to the entries. I have the entries of goods imported to Mr. Lazare through the Custom house between the 1st of August and 31st December. Amount £400.

Mr. LAZARE.—I am the plaintiff in this suit. These invoices are the original ones I put in for this case. I cannot remember whether the goods I imported from France all came through the port of Toronto or not. I

cannot say where the goods of this invoice of the 24th of July were entered. Nor the next one. Nor the next one. I cannot say at which port any of these goods were entered. I do not remember whether I entered any goods at any other than Toronto. I cannot remember whether I entered goods at Montreal, Kingston, Hamilton, or any other place. This is my signature, but I cannot say whether I have the invoices or not. I decline to answer any question about the Custom House.

Mr. Cameron.—Is that the correct value of the goods you entered at the port of Toronto?

Mr. Eccles.—You need not answer that question.

Mr. Cameron appealed to his lordship.

His Lordship said that the plaintiff need answer no question that would afterwards criminate himself.

Witness continued to Mr. Cameron.—I cannot tell whether those goods or any portion of them are mentioned in the invoices. Or those goods, or those mentioned in this invoice, dated the 19th October; or this one 19th September; or this one 21st August. I cannot remember whether any of these goods are in the invoices. I cannot say whether I entered goods at Montreal, Kingston, or Hamilton. I cannot tell where all the goods in my shop were entered at. I cannot tell where all the goods mentioned in the stock book and invoices were entered. Those entered in this book were entered some at different times and some at the same time. I took stock in August when all those entries were made. I did not make them all, on second thought, till after the fire. I took my stock prices lower than cost, and therefore did not carry it forward. I carried the balance over at a lower rate. The different per centage for sales and making the currency were added. I have the cost price, and have added fifty per cent. Those entries were all made after the fire. I cannot tell where I entered my goods. I put away the entries after I received them.

To Mr. Eccles.—Those invoices are the real cost of the goods. This is the account current sent by Rheims and Co. up to 31st December, and agrees with the invoices sent by them. Those invoices contain the real price I paid Rheims and Co. for the goods. Mr. Maulson directed me how to make out this ledger. No goods went out of the shop from the 31st, if any to the time of the fire, unless what I sold. The day book contains a correct entry from day to day of what I sold. That stock book is correct. The stock up to the 31st August is entered in the ledger. The value of my stock the night before the fire was about £6,000. I was there at the fire and saw a great quantity of goods carried off. The statement I sent in to the Insurance Company contains my exact loss. I have not concealed or disposed of any of those goods so as to produce the deficiency. I know nothing about any of the missing goods. The value of the contents of this small box at cost price would be \$60, and I missed a great deal of goods

of this sort. Indeed most of my loss fell upon this sort of goods. After the goods went into the Rossin House dining room, I missed a great quantity of fancy jewellery. The Insurance Company took charge of the goods when they were placed there.

To Mr. Cameron.—This is the account from Rheims & Co. I have the invoices of those goods, and here are real invoices. I do not remember where the invoices of those goods are. I looked for them but could not find them. They are of no use to me, and I did not keep them.

To a Juror.—I could not say whether the goods were taken from the dining room or from the street, but I know that they were missing. The £6,000 I mentioned was the cost price, adding 50 per cent to the Paris prices.

Mr. Cameron.—Are those the invoices which you took to the Custom House to pass the entry?

Witness.—Those invoices were of no use to me, and therefore I did not keep them.

Mr. Woodhouse.—These invoices were not entered at the Custom House—as they are not stamped with the Custom House stamp.

HON. MR. CAMERON then addressed the jury for the defence. He said that his learned friend, Mr. Eccles, in opening the defence had directed attention to the matter at issue between the plaintiff and the Insurance Company; he would therefore pass by the first and second pieces of the case, and come to the consideration of what after all were the most important issues of the case, namely, whether the plaintiff had given to the Insurance Company all the information that they were bound to do by their policy, and whether there had been any fraud or false swearing perpetrated by the plaintiff. He concurred with the learned counsel for the plaintiff, when he said that an Insurance Company ought never to come into court and resist the payment of a claim, unless they had very good and sufficient grounds for doing so. But at the same time, he would not go so far as his learned friend went, and notwithstanding all that he said to the contrary, he (Mr. C.) could assure his learned friend that the Phoenix Insurance Company here never resisted a claim made on them for the last sixteen years. And the Royal Insurance Company was also prompt in its payment, and it was not without due consideration that they now came before the court to resist the present claim; and he left it to the jury to say whether the Insurance Company had not acted wisely in bringing the matter into court as they had done. With regard to the giving to the Insurance Company due information by the plaintiff,—such had not been done, and there was no doubt that such information might have been given, for it was strange that when stock had been taken on the 31st of August, and when entries had been made by the plaintiff, of the monies he received for stock down to the time of the fire, and when they knew what stock remained after the fire, that the plaintiff in the end could not say what articles he had lost.

On looking over the sale book, he saw that one-half of the goods had been put down as lost, but no information would be given as to the particular kind of goods that had been lost, which might easily be done, as supposing that the plaintiff had said that he had fifty silk dresses before the fire, and that after it he had only twenty, his loss in that particular would at once be arrived at. And why could not this plan be pursued with all the stock.— But no such information had been given to the Insurance Company, and that was one of the reasons, why they now came forward to resist the claim. Leaving this branch of the case, he would come to the next which treated of fraud. The learned counsel for the plaintiff had said, the effect of the affidavit already alluded to, would be to charge Mr. Lazare with perjury. But he (Mr. C.) could not help that—the responsibility of such a charge did not rest upon him, but upon the man who could at one time make a declaration to show that he was entitled to £3000, while it could be shown that his claim never amounted to £800. And not only were these good grounds for believing that there had been false statement, but also the evidence of Mr. Lazare, which the jury would bear in mind, that Mr. Lazare could not remember where his goods came from—whether they had been entered at Montreal, Hamilton, or Kingston, or any other place, or in fact anything about them. Likewise, the jury would also remember, that he could not tell where the invoices of the goods were, and a great many other important matters. But the moment that his learned friend, Mr. Eccles, asked him anything, he could remember everything. Now he had heard a great deal about the stealing of the goods from the Rossin House, and how easily it was to do so, since the goods were valuable, and a great deal of valuable articles would fit into a small box. All he had to say to that was, that such might be the case—but if so, then the whole stock of the plaintiff of £5000, would fit upon a single shelf, and therefore it was ridiculous to bring witnesses to speak of the empty look of the shop after the fire, for the plaintiff might have all his valuable stock stowed away in a very small space. And then again, how strange it was that when Mr. Lazare, the plaintiff, had been making such a great cry about the quantity of goods that had been stolen from him, he did not at once take away the articles that were hid in the dung-hill, when he was told about them. How strange it was that if any man had stole them that no man came to take them away again. Did the jury think that any one had secreted those articles then, in order to give a colouring to the case? And indeed, what else could any one think under the circumstances of the case. But apart from all this, had any evidence been shown that £3000 worth of goods had been stolen, as had been alleged? Taking into consideration the pieces of lace, and silk, and all the other things that had been mentioned as likely to be stolen or damaged, the sum total would only amount to £150. And did the jury for one moment suppose that no account of the precious goods

in the shop had been kept by Mr. Lazare, and that he could not tell whether a valuable lace dress or any of those valuable handkerchiefs had been sold in the day or not. There was no doubt that he could. But at all events, there was no doubt that a wrong had been committed in arriving at the sum total of the stock—either a smaller value had been put upon the stock, or else a wrong valuation had been made which would benefit Lazare, and it would be for the jury to determine which. Then, it was not said or attempted to be proved, that the loss sustained by the plaintiff had been by fire, and could it be possible that so great a loss could have occurred at such an early hour by the goods being stolen? There was another branch of this part of the case to which he would allude. It had been shown that the plaintiff defrauded the Custom House; and would not he defraud the Insurance Company. But Mr. Eccles says that we have nothing to do with that. However, the jury had a great deal to do with it, for a man who could perjure himself out of court, would not scruple to do so in court; and if he made a false statement in regard to any portion of his goods, would he not do so in regard to them all. How could there be such a loss by fire as that alleged by the plaintiff, under the circumstances under which it broke out? Nearly all the goods taken from the house were taken to Rae's saloon, except those taken by Mr. Smith to his saloon, which the plaintiff's counsel made so much about; a little went west it is said, and a few articles were taken across the street, and Mr. Lazare said some articles had been taken from the Rossin House dining-room. But have £3000 worth of goods been really taken away or destroyed in this manner. Where are the invoices of this large quantity of goods, that we may at once see how much has been taken away, and the exact value of them, and in fact arrive at the conclusion that the loss has taken place. The jury would remember that Mr. Lazare refused to say at what port any of his goods were entered, and were they now to place confidence in the assertion—so easily proved, but so much avoided—that the plaintiff had sustained this loss. He knew the jury too—they were all business men, and he would not trouble them farther in the matter, but leave the matter in their hands as he would in the hands of any honest man. He did not care how such equivocal evidence came to be given by the plaintiff, but now that it was given, he thought that it should meet with the full consideration of the jury. In conclusion, he would say that any one who had heard the evidence from the first, and who had followed the case, could not but feel assured that in resisting the payment of the plaintiff's claim, under the circumstances, and in bringing the matter into court, the Insurance Companies had acted wisely, and done right.

Mr. ECCLES then addressed the jury on behalf of the plaintiff. He did so, he said, with a great deal of diffidence, not because he feared anything that had been said by the learned counsel who had preceded him, but be-

cause he saw on the jury men who, from their position, might be prejudiced against his client, and in favor of the Insurance Company. The jury had been told by learned counsel that the case only assumed two shapes; but they had been told wrong. His Lordship could tell them that it had assumed a third shape; and indeed it might enter into the minds of the jury that his client might possibly make an oversight in his calculation, and it would be for the jury to determine the consequences of this third branch of the case. All that he could tell the jury was, that his client had given the Insurance Companies all the information that it was usual to give on such occasions. Before going any farther, he would quote from the trial already alluded to in Lower Canada, as the results in both cases were the same, and as the jury in that case took an independent stand, in the hope they would also in this.

Mr. Galt objected against the learned counsel reading anything from the trial in question, as he would not have the opportunity of commenting on it. His Lordship coinciding with him,

Mr. Eccles dropped the subject, and continued: When the fire occurred his client went to Mr. Maulson to know how he would act, and he gave him three printed forms, Nos. 1, 2, 3, the first of which had annexed to it the three conditions brought in question in this suit. Now he contended that his client had given under the circumstances, the same information that had been given over and over again, and which had again and again been held sufficient. Mr. Lazare gave the Insurance Company his stock book, the invoices of his stock, the quantity of goods that had been missing after the fire; and what more could he do? After the Company had been applied to for the amount of loss sustained by the plaintiff, they sent into him a requisition pointing out the conditions of the policy, and requesting a statement of stock disposed of from the taking of stock until the fire, also the original invoices, all stock books, and other books of account in the business, and a detailed statement of all the goods that had been missing after the fire. Now such a request was, to the last degree, unreasonable, and one which never had been asked before. Even the agent of the Insurance Company, Callaway, said that it would be utterly impossible to give such a statement, in his own case where he never entered his everyday cash sales in his books, and was it not unreasonable to ask Mr. Lazare to give such a statement, who never entered his cash sales in his books. But supposing that such a statement had been given to them, it would be of no use to them. Mr. Lazare did all that was usual to do in such cases. With regard to the certificates, all he would say that it was a very strange proceeding; first thing, got one from Mr. Robinson, and that not suiting they got one from Mr. Brunel, and besides this there were three gentlemen who said Mr. Lazare's loss has been £3000, but that will not satisfy the Company. The conditions of the policy had been complied with as far as

possible, certificates had been got for them, and yet the Company say that they will not pay their just claim, but that they charge the plaintiff with fraud. He challenged the Company to show where any fraud had been committed by Mr. Lazare. Let the jury consider the conduct of the Company. first they got a certificate from Mr. Robinson, then they got another from Mr. Brunel, because the former one was not signed by a magistrate, then they said we won't look at these papers at all, we don't want them,—we want books, not papers. We want the books of the firm. But the Company had no right to the mercantile books of any firm, they might ask for copies of the books and papers, but they had no right to the books, and the law said so. He had shown cases indeed in which the books had been given up, and they had come back mutilated and full of erasures. Who was to know who might have access to those books when once they were in the Company's hands, and where they might be kept. Such things had happened, and ought to prove that no Insurance Company have a right to the books of a firm. The jury seemed tired, he could not help remarking, but he could not help that. He had a right to expect justice, and he did not care for their twisting and turning about, he had a right to expect justice, and no matter how tired they might seem, he would discharge his duty to his client. The former trial in Lower Canada lasted five days, this one had only lasted two days. To resume. The jury had plenty of evidence as to the value of the stock for almost all the witnesses spoke of it. Mr. Samuel Rossin had done so, so had also Major Gee, Levy, Notman, Rossin's clerk, Miss Pitt and Lyons. There were in all, nine witnesses who deposed to the value of the stock. Besides there were the invoices; and yet in spite of all this evidence, the jury were asked to find that the stock was of less value than that set upon it by all these witnesses. But he had nothing to do with that. The jury might say that the goods were overvalued, but it was his duty to say that the goods had been proved to be of such a value, and he would like to see the man who had come forward to prove that they were of less value than they were set down at. No man had been brought forward by the Insurance Company to prove that the goods were of less value. The Company only dealt in probability, not in facts. In the next place, there were eight witnesses brought forward to shew that the goods had been taken away out of the shop, and he would put it to the jury whether it was not possible that in the darkness of the evening, and hurry attending the fire, twenty men could not have walked off with boxes such as the one that had been shown, containing \$60 worth of stuff, without being perceived, and also, could not the goods have been taken from the dining-room by the servants who had a pass key to it.

Mr. Galt.—Only one servant had a pass key to that room.

Mr. Eccles.—Is it not possible that the goods were taken in this way; and notwithstanding all that the defendant had said, he said that it was the

way in which the goods has gone. Let the jury now turn to the evidence brought forward by the defendant; and in the first place that of the police. All the police swore that they watched the things so well that nothing had been taken beyond Rae's saloon eastward; while the Chief of Police,—Sherwood, whose evidence was particularly filled with assurance, swore that no goods had been taken away on the night of the fire. Now, was a man who could swear in that loose way to be believed? The jury, he was sure, would value such evidence at what it was worth. Let them look back at the instances in which the police force were ever engaged, and they would see that at circus riots, property to a great amount could be destroyed, and great commotion raised, and yet the police, who were all present, could not identify a single person who took part in that riot. Let the jury look at the late riot in the city, when a hotel had been attacked, and the police who were also present could not identify a single rioter. But it was useless to enumerate cases. They were too well known. And was it possible that the men who could identify nothing when it was their duty to do so, come forward and on this occasion swear that no articles had been stolen at this fire. It was absurd to dwell on it. Besides, in the face of all the Chief's evidence, Mr. Smith swears that he took down eight large boxes of goods to his own store, without the knowledge of the Chief, who swore that he was the first one present at the fire, but also according to the evidence given had not been there until some time after. And this is the defendant's evidence we are commenting on. Then again, Mr. Saunders swore that goods had been put down in the street, and he could ask the jury whether it was possible to prevent a hungry crowd from walking off with part of them. Mr. Costello could walk off with walking sticks without the knowledge of the police. The learned counsel went through the evidence at some length, and alluded to what the learned counsel had said in regard to fraud. He said he could not sufficiently condemn the course taken by the Insurance Company, in producing those invoices to show that Mr. Lazare had been guilty of fraud. Such charges on the part of the Insurance Company, were most unjust, and sunk them to the lowest depths of degradation. Was every man who came to the Insurance Company for the amount of his policy to be put in the jury box and ask whether he ever did anything which he ought not to have done? If so, the Company should insert a clause in their policies stating that they will require the holder of the policy to show that all his goods had been entered at the Custom House. But supposing, for the sake of argument, that Mr. Lazare had smuggled those goods. What was the difference to the Insurance Company. To do so was certainly wrong; but at the same time, what difference did it make to the Insurance Company. If such things were allowed there would be an end to all Insurance Companies. For his own part, however, he did not care two straws about the affair, and Mr.

Lazare could say so to, and have refused to answer any questions in the matter—for to ask him such questions was to ask him to convict himself. He would therefore ask the jury to put all these things from their minds as having nothing to do with the case, and which had no bearing on it. If all the merchants in the city were put into the box, and examined in the same manner, he would not like to answer for the half of them. He would ask the jury to go into the evidence of the case. There were Rheims & Co.'s entries. Were they true or were they false. Nothing dishonest had been shewn on the part of the plaintiff, and he would therefore leave his case in the jury's hand without further remark. Before sitting down he remarked that the defendant had not sworn that the plaintiff's stock was of less value than the plaintiff said it was. It was not attempted to be shown that Mr. Lazare's shop was empty before the fire. The evidence of the witnesses who swore as to the value of the goods was unimpeached. The goods were in the shop before the fire. They were not there after the fire. Where had they gone to? These were matters for the jury to arrive on. With regard to the bracelets that were found in the dung-hill, and which his learned friend had gone so far as to say had been hid by the plaintiff; he could inform the jury that when Mr. Lazare first heard of them, he came to him and told him of them. And he, (Mr. E.) told him to go at once and acquaint the Insurance Company with the matter, and he did so, and they were immediately afterwards taken away, and their value—some \$20 deducted from the loss already set down. And at the same time Mr. Lazare was in a terrible state of excitement, at his loss, and scarcely knowing what he was doing. With these remarks he would leave his case in the hands of the jury.

The JUDGE then charged the jury. He said the case, which was one of considerable importance with regard to the character of the plaintiff, had taken up a considerable time; which, however, was of no consequence, it being only right that it should receive due attention. The jury had two things to consider: first, the extent of the plaintiff's loss; second, whether the statement made by the plaintiff of his loss was such a one as the Company had a right to demand; and, before going any further, he would read the Company's policy on this head, and leave it to the jury to say whether what was therein set forth was reasonable and fair. He would also say, while on this subject, that he had tried several cases such as the present, and could say that in many cases it was impossible to make a detailed statement of the loss incurred by the fire, as the policy of the Insurance Company demanded. But, at the same time, such a statement could be made out as would show what goods had been sold and what goods had been destroyed by fire. The cash sales would show what amount had been sold, and the balance of stock after the fire would show what amount of goods had been burnt. Some merchants were very particular, and had a

note kept of the articles sold by each clerk, and in this case it would of course be still easier to give a detail of the loss. It is contended that a more detailed statement could have been given in this case. Now the jury would see the allegation from the nature of the evidence given in. The Insurance Company say that the information given by the plaintiff was not what they wanted. Now it was for the jury to say whether the statement demanded by the Insurance Company was reasonable. If they were satisfied that the information given in was all that could reasonably be required, then they had nothing to do but to consider the amount of the plaintiff's loss. If they found that it was not reasonable information, then they would find that for the defendant. Again, by the invoices the stock was set down at £2,836 in August; and to substantiate this, several women are called who helped the plaintiff to take stock and afterwards had recourse to the books in which the entries were made, and saw that the figures were correct as they called them out to Mr. Lazare. The invoice of July amounted to 3,943 francs, which it was said was not entered in the stock taken in August. This was a fact for the jury to determine on.

Mr. Cameron would show this invoice to his lordship on the book.

His Lordship.—It is entered as \$276; but it is probable that it was not taken into consideration at the time. There is another invoice on the 24th July, from the same place, amounting to 1,732 francs. There was also another from Henderson; and one on the 15th August, amounting to 11,704 francs; another, dated October 13th, 3,076 francs; and another in September for 4,939 francs. All these invoices are said to be made out from the original invoices by which the goods were checked. There is also a statement from the house in Paris, showing the amount of goods which were bought there, amounting to 72,000 francs, which sum includes all these invoices. Now the plaintiff could tell the value of the goods he lost by these invoices. But it was for the jury to say whether the information afforded the Insurance Company of his loss was in accordance with the conditions of the plaintiff's policy, by which he was bound to furnish the Insurance Company with copies of all invoices, and books and papers in the matter, that would enable the company to arrive at a correct estimation of the loss the plaintiff sustained, or to say whether such a request was a reasonable one. The question as to the value of the goods then came up for consideration; and of course all the goods that had been stolen, from the taking of stock in August up to the time of the fire, would be included in the sum, which might fairly be set down as Mr. Lazare's loss. No doubt of it. The Company will have to bear that loss; and that was always an objection in such cases as the present. And then, every merchant who comes into Court in such cases as the present is sure to have been making 33½ per cent. on his stock, yet it was somewhat strange that failures did sometimes occur among those very men, in spite of the 33½ per

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cent. they were making. The mode generally adopted on the occasion of fires by no means showed the nett loss a merchant sustained; but, at the same time, was there a better means of arriving at the loss? That was the question. When goods are sold for cost, the articles disposed of are not taken notice of; and when a fire occurred, it was impossible for such a merchant as Mr. Lazare to arrive at an idea of his loss, unless by adopting the usual plan. And on the whole, perhaps, there was no better plan than the one adopted. The strong points in the plaintiff's case were the evidence of the women, and that of those persons who were in the shop shortly before the fire, and gave testimony as to the value of the stock at that time. It is said that a man may go into a shop and be able to tell the value of the goods in it by looking round, and it might be the case; but it was a matter to go to the jury, and it was for them to say whether such evidence satisfied them or not. A strange feature in the plaintiff's case is, that it is not pretended that goods to any large amount had been destroyed by fire, but that the largest amount of them had been stolen. To meet this, it is said that great precaution had been taken to prevent the goods from being stolen; that the police had been on the ground early in the evening, and that goods to that large amount could not have been stolen. And to meet this again, it is advanced large quantities of those valuable goods might have been stolen in those boxes which had been exhibited in court, and which, though small, contained very expensive articles. And here he might remark that the jury were not told what proportion of the goods stolen were silks, and what proportion were jewellery. One witness says that some of the goods were valuable, and others say that they were all valuable. Then as to the statement made by the defendant in relation to plaintiff's entry of his goods at the Custom House below their value—the plaintiff says that they were the true value of the goods. And here he could not help remarking that it was not right for a man to come into Court and say that he did not know at what port any of his goods were entered. Either these declarations were true or false. If they were false, it was not for the plaintiff to say that it was dishonorable in the Insurance Company to drag these matters to light. The dishonor did not lie on the Insurance Company but on the man who gave occasion to the charge; as if a man was the occasion of dishonor being cast upon him, he could not turn round and say that it was dishonorable in any one to cast it upon him. And the defendant was right to ask the jury to take these things into consideration. If the plaintiff had the amount of goods he alleged, and then sustained the loss he alleged, it was for the jury to find a verdict for him. But if the jury found that there had been any false swearing in the matter, then they would find for the defendant. There was no use of false delicacy in the matter. He did not think that the Company would make a statement that was not right, or that they would take an unwarranted advantage. It

is quite evident that a difference of £2,000 or £3,000 could not occur unless there had been something wrong. If, therefore, the jury found that the value of the goods had not been set down right, they would find for the defendant—that is, that they had been set down at £6,000 when they were they were only worth £4,000.

Mr. Eccles said that that was a matter of fact for the jury to determine.

His Lordship.—Of course he left it entirely to the jury. And he would leave it to them to say whether the goods removed had been damaged in the manner described. It had been said that one of the servants had a skeleton key, and no doubt the person who had this key was a person in whom strict confidence could be placed. Again, with regard to the invoices, the jury had a right to see that all the invoices were correct; but at the same time, notwithstanding that Lazare had done wrong, he was also entitled to recover. At the same time, if Rheims & Co. sent false invoices with their goods, with the view of cheating the revenue of the country, he could say that the law of the land should not be made subservient to enable them to recover any claim in which their illegal practices were concerned. Now he could not say that this was a matter to be taken into consideration, and he could not say that it was a matter not to be taken into consideration—as *Mr. Lazare* might still have had the full value of the goods in the invoices that had been called in question. The jury would now retire and take the matter into consideration.

The jury retired, and after a short absence returned, and before being allowed to give their verdict the plaintiff's attorney said, "stop," my Lord, "we will take a *Non-suit*"—which having been registered, the jury were then dismissed.

LAZARE v. THE PHENIX INSURANCE CO.

This action was precisely similar to the one reported above: the evidence taken in the latter case being read in this case from *His Lordship's* notes.

The jury having retired and being allowed to hand in a *sealed* verdict; when the Court met in the morning, the verdict having been read, proved as follows: "We find a verdict for the defendant."